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OFFICE OF PETITIONS

In re Application of
Kannan Srinivasan et al.
Application No. 09/805,336
Filed: March 13, 2001
Attorney Docket No. 696.003

ON PETITION

This is a decision on the petition under 37 CFR 1.137(a)¹, filed May 23, 2005, to revive the above-identified application. This decision also treats the petition in the alternative under 37 CFR 1.137 (b)² as requested.

The petition under 37 CFR 1.137(a) is **GRANTED**.

The petition under 37 CFR 1.137(b) is **DISMISSED** as involving moot issues.

This application became abandoned December 14, 2004 for failure to file a timely reply to the non-Final Office Action mailed September 13, 2004. Accordingly, a Notice of Abandonment was mailed March 23, 2005.

The file record discloses that a revocation and power of attorney, as well as a change of address was received in the office on August 20, 2004. The record also reveals that

¹A grantable petition under 37 CFR 1.137(a) must be accompanied by:

(1) the required reply, unless previously filed; In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application. In a nonprovisional utility or plant application filed on or after June 8, 1995, and abandoned for failure to prosecute, the required reply may also be met by the filing of a request for continued examination in compliance with § 1.114. In an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof, the required reply must be the payment of the issue fee or any outstanding balance thereof.

(2) the petition fee as set forth in 37 CFR 1.17(l);

(3) a showing to the satisfaction of the Commissioner that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(a) was unavoidable; and

(4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required pursuant to 37 CFR 1.137(c)).

²Effective December 1, 1997, the provisions of 37 CFR 1.137(b) now provide that where the delay in reply was unintentional, a petition may be filed to revive an abandoned application or a lapsed patent pursuant to 37 CFR 1.137(b). A grantable petition filed under the provisions of 37 CFR 1.137(b) must be accompanied by:

(1) the required reply, unless previously filed. In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application. In a nonprovisional utility or plant application filed on or after June 8, 1995, and abandoned for failure to prosecute, the required reply may also be met by the filing of a request for continued examination in compliance with § 1.114. In an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof, the required reply must be the payment of the issue fee or any outstanding balance thereof.

(2) the petition fee as set forth in 37 CFR 1.17(m);

(3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional; and

(4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required pursuant to 37 CFR 1.137(c)).

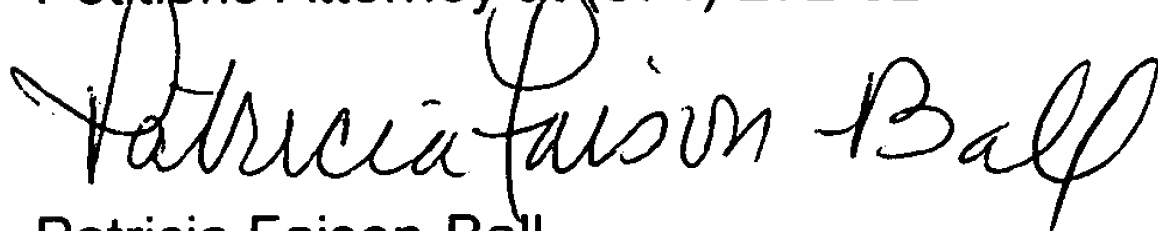
the notice of acceptance of Power of Attorney wasn't mailed until October 18, 2004. However, in the interim, a non-Final Office Action was mailed September 13, 2004 to the previous attorney of record.

Petitioner argues that the failure to file a proper and timely reply to the non-Final Office Action mailed September 13, 2004 was unavoidable due to their non-receipt of the office communication.

In view of the facts set forth in the petition and a review of the file record, it is concluded that due to an error on the part of the USPTO, the non-Final Office Action mailed September 13, 2004 was sent to the wrong address and that it was therefore never received by the proper party of record. Accordingly, there is no need to treat the petition under the unintentional standard and thus the difference between the petition fee under 37 CFR 1.137(a) and 37 CFR 1.137(b), \$500.00, will be refunded to petitioner in due course.

This application is being forwarded to Technology Center 3622 for appropriate action on the amendment filed May 23, 2005.

Telephone inquiries concerning this matter may be directed to the undersigned Petitions Attorney at (571) 272-3212.

A handwritten signature in black ink, reading "Patricia Faison-Ball". The signature is written in a cursive, flowing style.

Patricia Faison-Ball
Senior Petitions Attorney
Office of Petitions